

erty, and not in consequence of a conviction of the person.

tion of the country has sanctioned the distinction by laws passed under the

If any one ask, *Why* prohibit confiscation in pursuance of conviction, and allow it without conviction?

I reply: The burden of showing the unconstitutionality of the law lies on those who affirm it. They cannot defeat it by showing that the Constitution has forbidden it in cases not now contemplated. The question is what the Constitution says against confiscation *without* conviction of the person; and I say it is a silent. It limits confiscation as the consequence of conviction; and there it stops.

It is possible a reason may be found for this limitation in connection with a conviction, in the spirit which dictated

crimes were left to the definition of Congress.

Treason had been the pretext of many bloody judicial murders in English history; constructive treasons were the cruelties of jealous tyrants or greedy applicants or fierce opponents. To require limit the crime to open war, to require double proof, to remove the temptations of cupidity from among the motives of prosecution of the person, were *thought* correctives to the political or personal passions which might prompt unjust or revengeful prosecutions to the death. The temptation of covetousness was removed when conviction could involve forfeiture only between judgment and execution.

But a confiscation enforced by other process of law than a conviction of the person followed by a bloody end, was subject to no such objection; and it was justly left to the wisdom and moderation of Congress—for emergencies like the present.

It is quite certain that the restriction

prison and attainer to the life of the person convicted, is not restricted to lands and still more certainly has no reference to estates tail. They were liable at common law to forfeiture by attainer under their form of conditional fees, though simply enough a distinguished Senator assumed that they were exempted from a while by the construction of the statute, "*De donis conditionalibus*"; but lost their exemption in the reign of Henry VIII.

Such attempts to escape a Constitutional difficulty merely discredit all defense of the confiscation bills.

The Constitution means just what it says; and the opponents of confiscation

Leave that style of argument to them, in common with those strict constructionists who have found the denial of powers to Congress the most effectual way of leaving the government disarmed and powerless in the face of the rebellion in arms.

The real explanation of the restriction as well as of the careful definition, of treason, I think I have above given. I

protection, but not to deprive the government of any power essential to the maintenance of the government against the temptation of ambition or the violence of insubordinate factions.

treason under other names and free from those restrictions. The traitors who burned the Maryland bridges and who burned the Massachusetts men on the 19th of April were guilty of treason; but they were also guilty of resisting the laws of the United States, and of a riot, and obstructing mail routes; and for any of those crimes any punishment, any confiscation may be Constitutionally imposed as the consequence of the judgment of the courts.

Still, the Constitutional provision is salutary admonition in favor of moderation, especially suited to these times.

Very sincerely your friend,

HENRY WINTER DAVIS.

Col. Sir Percy Wyndham, of the 1st New Jersey cavalry, was taken prisoner by the rebels under Jackson, near Hartsburg, while serving under Fremont. He was born of French and English parents, at sea, on board the ship-of-war *Arab*, in February, 1833, and is consequently in his twenty-ninth year. He was taken to the East India, where he

age followed his father's example and entered the British service. He subsequently joined the French army, and afterwards joined the Austrian army where he served eight years, attaining the rank of captain. When the allies went out for the Crimea, he left the Austrian and joined the Italian army, and at the

was Lieutenant Colonel, commanding Second Brigade, Italian army. He has been through five campaigns and has received two promotions, (Major and Lieutenant Colonel) on the field of battle; he was so decorated with the military of France. Served at the battle of Volturno (Capul). Colonel Wyndham, on the breaking out of the rebellion obtained a furlough of one year to visit this country, with permission to enter the service of the United States. He came with many

itary officers of Europe, among which was one from Garibaldi to General McCallan. Upon presenting his credentials, our Government tendered him many splendid appointments; but desiring active service, he uniformly declined. He was, with many disappointments, but finally Governor Olden, of New Jersey, became acquainted with the facts, and upon ascertaining the Colonel's credentials, he immediately appointed him to the command of the First New Jersey cavalry. Colonel Wyndham is said to resemble in appearance Victor Emanuel.